



POLICE DEPARTMENT

January 31, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Brett Ortiz
Tax Registry No. 933129
40 Precinct
Disciplinary Case Nos. 82684/07 & 85412/09

The above-named member of the Department appeared before me on October 1, 2010, charged with the following:

Disciplinary Case No. 82684/07

1. Said Police Officer Brett Ortiz, assigned to 40 Precinct, on or about and between September 4, 2005 and November 13, 2005, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer did wrongfully and without just cause make five (5) inquiries in the WNAM/WNAY system, which was not related to the official business of the Department.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Police Officer Brett Ortiz, assigned as indicated in Specification #1, on or about the dates indicated in Specification #1, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer did wrongfully and without just cause make five (5) inquiries in the WNAM/WNAY system, which was not related to the official business of the Department, using the Department access code of another member of service without his permission or authority.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

3. Said Police Officer Brett Ortiz, assigned as indicated in Specification #1, on or about and between May 2005 through November 2006, at a location known to this Department, Bronx County, did knowingly associate with a person reasonably believed to be engaged in, or likely to be engaged in, or believed to have been engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2(c) – PROHIBITED CONDUCT

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Disciplinary Case No 85412/09

1 Said Police Officer Brett Ortiz, assigned to 40 Precinct, on or about October 20, 2008 to November 2, 2008, was wrongfully and without just cause absent from said residence without the permission of said officer's District Surgeon and/or Health Services Division Sick Desk Supervisor

P G 205-01, Page 2, Paragraph 4 – REPORTING SICK

2 Said Police Officer Brett Ortiz, assigned as indicated in Specification #1, on the dates indicated in Specification #1, while on sick report, said Police Officer did leave the confines of the City or residence counties without the approval of the Chief of Personnel in that said Officer traveled to Las Vegas, Nevada

P G 205-01, Page 6, Additional Data – REPORTING SICK

The Department was represented by Lisa Bland, Esq , Department Advocate's Office, and the Respondent was represented by John Tynan, Esq

Respondent, through his counsel, entered a plea of Guilty to the subject charges
A stenographic transcript of the trial record has been prepared and is available for the
Police Commissioner's review

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged

SUMMARY OF EVIDENCE IN MITIGATION

Respondent is a seven-year member of the Department currently assigned to the 40 Precinct He testified that he was 21 years old when he was appointed to the Police Department Prior to becoming a police officer, he went to college and worked full time

at [REDACTED]
[REDACTED]
[REDACTED]

Respondent testified that he is currently full duty at the 40 Precinct where he works in the Conditions Unit. His assignments include covering conditions around the command such as noise and drug complaints. When he joined the Police Department, he still lived in the same neighborhood where he grew up and he was still friendly with the people that he knew as a child.

During the period September 2005 to November 2005, Respondent testified that he was a police officer assigned to the 40 Precinct but he lived within the confines of the 43 Precinct. He was being trained during that period on various mobile digital terminals used by the Police Department to conduct background and warrant check investigations. He explained that during that time period, he entered into the Department computer system the names of individuals who were not related to the law enforcement activities that he was involved in. Some of the people that he put in were his parents, his brothers, his sisters and a couple of friends that he knew. He explained that he used those individuals to run in the computer to verify whether the computer was actually working, he stated that there was no other reason for him to use those individuals. When he ran the names of his friends, he did not learn that any of them had any criminal records. He further stated that he was not aware that some of his friends that he grew up with had criminal records because he never asked them.

Respondent was asked whether he knew an individual by the name of Dhanraj Jeeuth. Respondent stated that Jeeuth was his next door neighbor and he has known him

for the past 20 years Respondent acknowledged that he ran Jeeuth's name into the computer system and he used it for the purpose previously stated He explained that he did not have his own access code to run the names in the computer, so he used a code that belonged to another police officer who had allowed him to use his code for job related purposes He explained that it was very difficult to obtain a code Respondent stated that he never informed the officer that he used his code for non-work related purposes Once he learned that he was getting Charges and Specifications for using the code for non-work related purposes, he informed the officer of what had happened

Respondent testified in June that during the course of the investigation of this matter he learned that some of the individuals he grew up with had criminal records He was informed by the Department that he had to distance himself from these individuals Respondent explained he knew some of his friends had some run-ins with the law, but once he was informed by investigators to lessen his contact, he did, in fact, lessen his contact with those individuals

Prior to October 2008, Respondent testified that he was injured while working as a police officer He was working a barricade detail within the confines of Manhattan and another police officer accidentally dropped a wooden barricade on his hand The result was that he tore the ligaments in his hand and broke his right thumb He had surgery and a pin was inserted into his thumb Eventually the pin was removed from his thumb Respondent estimated that this occurred in the beginning of June 2008 He further explained that he was out line of duty sick from June 2008 until October 2008 Prior to October 2008, Respondent testified that he had received permission from the Medical Division while out on sick leave to leave the jurisdiction He stated that he had approval

to go to Miami, Florida and he spent four days there. He stated that he was aware of the process when someone is on sick leave to get permission to leave the jurisdiction.

Respondent stated that he received a telephone call from his older brother on October 20, 2008 [REDACTED]

[REDACTED] He asked Respondent if he wanted to go and the trip was going to be during the weekend. Respondent explained that the next day he took the trip without informing the Department of where he was going. Respondent stated that he used bad judgment and that in a 24 hour period he made a decision to fly to Las Vegas, Nevada without attempting to contact the Medical Division for approval. The plan was that he would be away Monday through Wednesday, a three-day period and that his next scheduled date to appear before the District Surgeon was not until the following Friday, a week and a half away. Respondent explained that it was not his plan to try to "get over on the Department," he just thought he could take the short trip.

Respondent testified that his brother decided to schedule an all terrain vehicle (ATV) excursion outside of Las Vegas in the desert during the trip and Respondent agreed to go on the excursion. It was a group of approximately ten people, but Respondent had no idea how to ride an ATV. Respondent explained to the company who owned the ATVs that he did not know how to ride and they told him not worry that he would be okay. He was very concerned that something might happen and so the decision was made that he would ride in the back so that he would not slow down the rest of the group. Respondent stated that everyone left and as soon as he took off on the ATV, he lost control and flew off of a cliff about 30 to 35 feet and hit the ground. Once he hit the

gravel, Respondent shattered his elbow, fractured and broke his hip and wrist. He remained in this position untreated for approximately six hours in 95 to 100 degree weather. Respondent explained that he had no water, that he was bleeding and cut and he thought he was going to lose his life at that time.

Respondent testified that his brother had been looking for him the entire time and eventually saw that the ATV had fallen over the cliff. His brother then jumped down to where he was and called 911 to get medical attention for him. Emergency Medical Service responded, placed Respondent on a board and pulled him up over the cliff. They then transported him in the ambulance and then to a helicopter. He was later air lifted via helicopter to an emergency room in Las Vegas which took approximately 50 minutes.

Respondent explained that he had several surgeries. He had a surgery to his left elbow in which they inserted a metal plate. He also had ten screws inserted into his arm and an artificial metal ball was placed in his left arm. The artificial metal ball enabled him to move his joints so that he would have full use of his extremities. Respondent stated that he remained in the Intensive Care Unit at the Las Vegas, Nevada hospital for approximately two to three days. He was then placed with the regular population for the next three or four days. Following that he was transferred to a rehabilitation center. He estimated that he spent approximately two weeks in the hospital in Nevada. Respondent said that during this time period he contacted his delegate at the Police Department to inform the authorities that he was not going to be able to make his appointment with the District Surgeon in the Medical Division. He explained that the day of his appointment with the Medical Division was the day that he made all of his telephone calls.

Respondent testified that he was in a lot of therapy because in addition to not being able to move his elbow and his wrist, he was also unable to walk. He explained that he spent the entire time in Las Vegas in a wheel chair. He was transported in a wheel chair with his parents back to New York City. He then spent another month in rehabilitation learning how to walk, how to eat, how to dress, how to clean himself and was taking occupational therapy. He was totally dependent on everyone and eventually put in the hard work on how to walk and take care of himself. Respondent stated that he is currently on full duty as a police officer.

Respondent stated as a police officer, he has made between 70 to 80 arrests. He has never been the subject of any disciplinary charges aside from this matter and has not received any awards or commendations to date. He has never been carried Chronic Sick nor has he been the subject of any disciplinary monitoring.

During cross-examination, Respondent acknowledged that he ran computer checks on his parents, brother, sister and some acquaintances. He admitted that he ran these checks to see if the computer was in proper working condition. He was asked whether there were other reasons why he ran the names of individuals. For example, he was asked whether he ran the name of Melvin Ramirez to check to see whether his license was suspended. Respondent replied, "Not to my knowledge." Respondent was then asked whether he had an official Department interview on November 3, 2006 where he was represented by attorney Robert Brown and that present was Detective Santiago. Respondent was asked whether he recalled being asked the following question and giving the following answer:

Question (Lieutenant Hernandez): Melvin, did you ever run him in the Department computer Melvin Ramirez?

Answer (Respondent): I think I did run him just for – just because I think I was going to check to see if his license was suspended or something like that I don't remember but I know to my knowledge I think I ran it, his license just because he asked me if I can do it and then I did

Respondent was asked whether he recalled that question and giving that answer with respect to Melvin Ramirez and he responded, "I guess so " Respondent was again asked if he ran the computer checks not only to see if the computer was working, but to see if someone's license was suspended and he responded, "If I said I did I guess I did "

Respondent was asked whether he ran the name of Charles Stork to see if his license was suspended Respondent stated that he has been through a lot in his life and he honestly does not remember

With respect to the criminal association allegation, Respondent was asked whether during the period May 2005 to November 2006 as a member of the New York City Police Department he associated with a couple of childhood friends that he knew had been arrested Specifically, Respondent was asked whether he associated with Dhanraj Jeeuth Respondent explained that Jeeuth was his next door neighbor He was a family friend to his parents and he would come home and find him in his house He was asked whether he associated with him outside of his house and then Respondent explained that once in a while he would go out with him Respondent also admitted that he was in a football league with several of his childhood friends and they would play football games together He admitted that while he socialized with these people, he knew that some of them had been arrested in the past even if he did not know the disposition of their criminal cases

Respondent acknowledged that in June of 2008 he was on sick report for a line of duty injury He admitted two months later, he went on vacation in August and was taken

off of sick leave to take that vacation. Once he returned from that vacation he was placed back on sick leave. He acknowledged that he was aware of the Department procedure to contact the Police Department if he wanted to come off of sick report to take a trip out of state. He admitted that he had utilized the process in the past. He admitted that in October he did not contact the Police Department prior to taking a trip with his brother. He acknowledged that he took a trip October 20, 2008 although he was on sick report and left for Las Vegas. Respondent stated that it was the second day of his trip to Las Vegas that he took the ATV excursion and was seriously injured.

Respondent acknowledged that from the time he was injured until approximately October 31, 2008 neither he nor a family member contacted the Police Department. Respondent agreed that it was not until the day that he had his appointment scheduled with the District Surgeon, and that there was no way that he would be able to make that appointment that he, in fact, contacted his union delegate. Respondent agreed that he used bad judgment in taking that trip. He explained, "very much so bad judgment that almost cost me my life."

Upon questioning by the Court, Respondent acknowledged that an ATV is an all terrain vehicle. He described the vehicle as a four wheeler quad. He stated that at the time he decided to operate the vehicle he was on sick report for a hand injury. He said that the plate that was in his thumb had been taken out and the pins had been removed at that time. He acknowledged that he was the operator of the ATV at the time that he took the excursion. Respondent said that he had been hospitalized at Las Vegas Medical Center and that he returned to full duty September 1, 2009.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined, see Matter of Pell v. Board of Education, 34 N Y 2d 222 (1974)

The Respondent was appointed to the Department on July 1, 2003. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has pleaded Guilty to wrongfully making five inquiries in the WNAM/WNAY system which was not related to the official business of the Department. He also pleaded Guilty to making those inquiries using the access code of another member of the service without permission or authority. He admitted that he utilized the system to access information on family members as well as to ascertain whether a friend's driver's license was suspended. Respondent also pleaded Guilty to associating with individuals likely to engage in criminal activity. Respondent admitted that he socialized with members of a sports team who he had reason to believe had criminal records.

Respondent also pleaded Guilty to leaving his residence without the permission of the District Surgeon or the Sick Desk supervisor. He further pleaded Guilty to leaving the confines of the City while on sick report without the approval of the Chief of Personnel when he traveled to Las Vegas, Nevada. Respondent acknowledged that he was on sick report for a thumb injury when he decided to travel to Las Vegas without permission of the Department. He further decided to participate in an ATV excursion where he lost control of the four wheeler vehicle he was operating and had an accident resulting in multiple fractures, several surgeries and hospitalization in Nevada for

approximately two weeks Respondent admitted that it was not until the day that he was scheduled to report to the Medical Division [approximately ten days after the initial trip] that he contacted his union delegate to inform the Department that he would not be able to make his scheduled medical appointment

Because Respondent has pleaded Guilty to all five Charges and Specifications pending against him, the sole issue before this Court is penalty The Assistant Department Advocate has recommended a penalty of the forfeiture of 50 days to be served in the following manner 30 days time to be served on suspension plus an additional 20 vacation days The Court disagrees For one, although Respondent mitigated to these Charges and Specifications, he tried to minimize the serious nature of each specification On multiple occasions, he utilized the Department code of another member of the service to run computer checks on family and friends The other member of the service allowed Respondent to utilize his or her personal code for access to do computer checks for official Department business Instead, Respondent used the code for personal use on five occasions Respondent testified that he used the code on family and friends only to check whether the computer system was working However, the Assistant Department Advocate confronted him with his statement during his official Department interview where he acknowledged that he did the computer check for a friend to see if his license was suspended

With respect to the criminal association charge, Respondent again tried to minimize his involvement by stating that these associations were with childhood friends who were friends of his family and who were invited into his home and he socialized with them there not by choice During cross-examination, however, he admitted that he

socialized with them outside of his home on occasion as well as participated in a sports league with them despite knowing that some of them had criminal records


With respect to the charges involving violation of the Department's sick leave policy, Respondent stated that he had no intention of "getting over on the Department " Yet Respondent went on vacation while on sick leave without Department approval Respondent took a calculated risk when he figured he could take the unauthorized trip while on sick leave to Las Vegas for three days, Monday through Wednesday, and return before his scheduled appointment with the district surgeon the following Friday, a week and a half away without the Department finding out He then decided to take an ATV excursion during that unauthorized trip despite having no experience operating a four wheel quad and being on sick report for a thumb injury This careless action on the part of Respondent while having the luxury of unlimited sick leave as a uniformed member of the Department warrants a severe penalty Respondent was aware of the Department procedure to follow when he was on sick leave and sought to take a vacation out of state He needed permission Respondent had utilized this procedure in the past and was familiar with it

But for the near death accident in the desert in Nevada, the Department would not have had any idea that Respondent left the state while on sick report In addition, instead of Respondent returning to full duty following recovery from his line-of-duty thumb injury, he remained on sick report for an additional ten to 11 months as he recovered from his fractured limbs and learned how to walk again following his ATV excursion While this Court is sympathetic to the extent of Respondent's injuries, Respondent should not benefit from his misdeeds, particularly since he had a history of being chronic

sick in 2007, the year preceding his Nevada trip. In addition, the Court takes judicial notice of the fact that according to the American National Standards Institute (ANSI) an all terrain vehicle is defined as one that travels on low pressure tires, with a seat straddled by an operator along with handle bars for steering control. It is designed to handle a wide variety of terrains than most vehicles. Respondent should not have been operating such a vehicle while on sick leave for his thumb. Thus a period of monitoring by the Department is warranted.

Accordingly, I recommend that Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further hearings. I further recommend that he serve a 30-day suspension and forfeit an additional 20 vacation days for a total of 50 days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials

APPROVED

JUL 07 2011




RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK


From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER BRETT ORTIZ
TAX REGISTRY NO 933129
DISCIPLINARY CASE NOS 82684/07 & 85412/09

In 2007 and 2009, Respondent received an overall rating of 3.5 “Above Competent” on his annual performance evaluations. In 2008, he received a rating of 4.0 “Highly Competent.” Respondent has not received any medals in his career to date.



Respondent has no prior formal disciplinary record.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials